

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Bell Telephone Company for Authority to Categorize Special Access and ISDN Services as Category III Services.

Application 00-11-004  
(Filed November 1, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING  
MOTION TO MAINTAIN CONFIDENTIALITY FOR TWO YEARS AND  
DENYING REQUEST FOR PERMANENT CONFIDENTIALITY**

**Summary**

The motion of SBC California, formerly Pacific Bell Telephone Company (Pacific), to maintain under seal propriety information submitted with the above-captioned application is granted for a period of two years, through September 22, 2005.

**Background**

On July 23, 2003, SBC California filed and served<sup>1</sup> a motion to maintain under seal proprietary information that it had originally submitted in November 2000, and for which the Commission granted proprietary treatment in Decision (D.) 01-08-066. The Commission's original order granting

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<sup>1</sup> On August 6, 2003, I directed counsel for SBC California to re-serve its motion on the service-list for the above-captioned proceeding since the original service was limited to the five Commissioners, the assigned Administrative Law Judge (ALJ), and the Law and Motion ALJ. The deadline for responses to the motion was extended accordingly by ruling of August 13, 2003.

confidentiality provided it would expire on August 23, 2003.<sup>2</sup> SBC California requests that the Commission permanently maintain these materials under seal because neither SBC California nor the Commission should be required to expend additional resources to evaluate continuing requests to keep these materials under seal. Alternatively, SBC California requests that if the Commission does not order this permanent remedy, the Commission should allow SBC California to withdraw the proprietary information from the record of the case. SBC California argues that because the case is now closed, there is no public interest in disclosure of this information.

Specifically, SBC California's motion pertains to the following information originally granted confidentiality in D.01-08-066:

- An unredacted version of the testimony of Michael Powell (Exhibit B to Pacific's Application).
- Attachments X through DD to the Powell testimony.
- An unredacted version of the testimony of Professor Jerry A. Hausman (Exhibit C to Pacific's Application).
- Attachment A to the testimony of Judith A. Timmermans (Exhibit D to Pacific's Application).

These materials contain market share data and growth rates for 1998 through 2000 for special access services provided by Pacific during that time. The materials also contain cost information for Pacific's special access products.

There were no responses to SBC California's motion.

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<sup>2</sup> By ruling of August 13, 2003, the confidentiality set to expire on August 23, 2003 was extended until further action on this motion.

## **Discussion**

I will grant SBC California's motion to maintain confidentiality, but I will limit the extension to an additional two years from the date of this ruling. I will not grant the permanent protection requested by SBC California.

I deny the request to permanently maintain the information under seal because it is not Commission practice to hold documents under seal for periods exceeding two years. SBC California has not explained in its motion why the nature of the information requires permanent confidential treatment. It is reasonable to conclude that eventually, outdated market share, growth and cost information of this type will no longer disadvantage the company if revealed. Although SBC California's motion alleges these materials remain "competitively sensitive," it provides no information elaborating on this statement as to how the release of outdated information would disadvantage the company. Further, because documents receive statutory protection from disclosure by Commission employees pursuant to Pub. Util. Code Section 583, and such disclosure can lead to prosecution as a criminal misdemeanor, it is important that we not seal records for long periods without serious consideration. Here, I believe there is no basis to seal the information for more than two years given the ease with which SBC California may obtain an extension of the protective order, assuming the company can show it is justified.

I also deny SBC California's request to allow it to withdraw the proprietary information in question from the record of the case. Removal of the information will create a gap in the record used as the basis for D.01-08-066. It is not in the public interest to allow the withdrawal of information used in Commission deliberations of an application. Such withdrawal would make the information unavailable for Commission staff to review, or even the general

public once confidentiality expires. In its motion, SBC California's only justification for withdrawal of the information is to save resources in deciding future confidentiality requests. This is hardly a large resource savings, and the public interest in maintaining a complete record supporting the Commission's decision outweighs any speculative resource savings. SBC California claims there is no public interest served by disclosure of this information, but it does not support this claim with any rationale. I disagree with SBC California's claim because there is a public interest in maintaining a complete record of the basis for Commission decisions.

I will grant an extension of the original motion for confidentiality for two years because the information, if revealed, would provide business-sensitive data of SBC California to its competitors. This could place SBC California at an unfair business disadvantage. Even though the information is outdated, it is of recent enough vintage that a competitor might be able to extrapolate current company specific information and market position from the data.

Therefore, **IT IS RULED** that:

1. SBC California's motion to maintain confidential treatment of the material originally granted confidentiality in D.01-08-066 is granted for two years from the date of this order. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except upon execution of an appropriate non-disclosure agreement with Pacific, or on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned ALJ, or the ALJ then designated as Law and Motion Judge.
2. If SBC California believes that further protection of the information filed under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as

the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date of today's protective order.

3. SBC California's request for permanent confidential treatment of the information described in its motion, or to withdraw this information from the record of this case, is denied.

Dated September 22, 2003, at San Francisco, California.

/s/ Dorothy J. Duda  
Dorothy J. Duda  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to Maintain Confidentiality for Two Years and Denying Request for Permanent Confidentiality on all parties of record in this proceeding or their attorneys of record.

Dated September 22, 2003, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

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